

1 Teresa C. Chow, Bar No. 237694  
tchow@bakerlaw.com  
2 **BAKER & HOSTETLER LLP**  
11601 Wilshire Boulevard, Suite 1400  
3 Los Angeles, CA 90025-0509  
Telephone: 310.820.8800  
4 Facsimile: 310.820.8859

5 Matthew D. Pearson, Bar No. 294302  
mpearson@bakerlaw.com  
6 **BAKER & HOSTETLER LLP**  
1801 California Street, Suite 4400  
7 Denver, CO 80202-2662  
Telephone: 303.861.0600  
8 Facsimile: 303.861.7805

9 *Attorneys for Defendants*  
SHARP HEALTHCARE and GROSSMONT  
10 HOSPITAL CORPORATION, dba SHARP  
GROSSMONT HOSPITAL (erroneously sued as  
11 SHARP GROSSMONT HOSPITAL)

12 **SUPERIOR COURT OF CALIFORNIA**  
13 **COUNTY OF SAN DIEGO – CENTRAL DIVISION**  
14

15 CARLA JONES, on behalf of herself and all  
16 others similarly situated,

17 Plaintiff,

18 v.

19 SHARP HEALTHCARE, a California  
Corporation, SHARP GROSSMONT  
20 HOSPITAL, and DOES 1 – 100, inclusive,

21 Defendants.  
22  
23  
24

Case 37-2017-00001377-CU-NP-CTL  
[Judge Ronald L. Styn]

**DEFENDANTS' OPPOSITION TO  
PLAINTIFF'S MOTION FOR CLASS  
CERTIFICATION**

[Filed concurrently with Lewis, LaBore, Cone,  
Hamel, O'Brien, M.D., and Chow  
Declarations]

Date: March 9, 2018  
Time: 8:30 a.m.  
Dept.: 74

Action Filed: January 12, 2017

25 Defendants Sharp Healthcare and Grossmont Hospital Corporation dba Sharp Grossmont  
26 Hospital, erroneously sued as Sharp Grossmont Hospital, (collectively referred to as "Sharp")  
27 hereby submit their Opposition to Plaintiff Carla Jones' ("Plaintiff") Motion for Class  
28 Certification ("Motion").

**ELECTRONICALLY FILED**  
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**Statutes**

Code of Civil Procedure Section 382.....4

1     **I.     INTRODUCTION**

2             In bringing her Motion, Plaintiff attempts to jam a square peg into a round whole. While  
3     class actions are statutorily permitted in California, they must meet certain criteria, most, if not  
4     all, of which focus on whether economy and efficiency favor class treatment. Neither does here.

5             To be certified, the class must be ascertainable. An ascertainable class puts each putative  
6     class member on notice of her inclusion in the class and allows the court to determine on whose  
7     behalf the named plaintiff is actually suing. Plaintiff's Class does neither. Plaintiff includes every  
8     individual who underwent a medical procedure in an operating room at Sharp's Women's Center  
9     between July 17, 2012 and June 30, 2013. But not every individual who falls within this "Class"  
10    was recorded, and Plaintiff has offered no administratively feasible way to differentiate between  
11    those who were and those who were not. Therefore, the Class is not ascertainable.

12            Similarly, a plaintiff seeking to certify a class must demonstrate that common issues of  
13    fact and law predominate. Plaintiff has failed to make such a showing.

14            First, Plaintiff has failed to demonstrate that the issue of whether Sharp's recording was  
15    "highly offensive" can be adjudicated on a class-wide basis. Each of the over 7,000 video clips is  
16    inherently different, some showing the entire procedure (although hidden behind a surgical tent)  
17    and others showing just the person entering and/or exiting the room. To determine whether the  
18    recording is "highly offensive" requires individualized analysis of each individual recording.

19            Second, Plaintiff has failed to demonstrate that the issue of whether Sharp's Admission  
20    Agreement can be enforced against individual Class members can be resolved on a class-wide  
21    basis. The Court would need to determine what the individual expected to be included in the  
22    Admission Agreement and whether those expectations were reasonable.

23            Third, Plaintiff has failed to show that individual damages can be determined in a  
24    manageable way. Plaintiff and each Class member seeks emotional distress damages, which are  
25    some of the most individualized types of damages and are often held to defeat class certification.

26            Based on the above, class treatment here would be completely unmanageable and would  
27    devolve into possibly thousands of mini-trials. Therefore, while class treatment is not disfavored  
28    in California, it certainly should be here. Plaintiff's Motion should be denied.

1 **II. STATEMENT OF FACTS**

2 **A. Sharp Grossmont Hospital and Sharp Healthcare**

3 Sharp Grossmont Hospital is an acute-care hospital located in La Mesa, California.  
4 (Declaration of Carlisle (“Ky”) Lewis, III (“Lewis Decl.”), ¶ 2.) Sharp Grossmont Hospital is the  
5 dba of Grossmont Hospital Corporation. (*Ibid.*) Sharp Healthcare is the sole member of  
6 Grossmont Hospital Corporation. (*Ibid.*) Sharp Grossmont Hospital, Grossmont Hospital  
7 Corporation, and Sharp Healthcare are hereinafter collectively referred to as “Sharp.”

8 Sharp provides obstetrical services, medical and surgical interventions, education, and  
9 counseling in its Women’s Health Center. (Declaration of MaryAnn Cone (“Cone Decl.”), ¶ 2.)  
10 Sharp provides a range of services in its Women’s Health Center, including, but not limited to:  
11 (1) cesarean sections; (2) hysterectomies; (3) routine biopsies; and (4) minimally invasive  
12 laparoscopic and laser surgeries. (*Id.* at ¶ 3.) Generally, before any patient undergoes a medical  
13 procedure at Sharp’s Women’s Health Center, she receives, reviews, and signs Sharp’s  
14 “Admission Agreement for Inpatient and Outpatient Services” (“Admission Agreement”). (*Id.* at  
15 ¶ 4, Ex. “C”.) The first line of the first paragraph of the Admission Agreement states: “You  
16 consent to all hospital services rendered under the general and special instructions of your  
17 physician(s), and to the taking of photographs and videos of you for medical treatment,  
18 scientific, education, quality improvement, safety, identification or research purposes, at the  
19 discretion of the hospital and your caregivers and as permitted by law.” (*Id.* at ¶ 5, Ex. “C”.)

20 These and other medical procedures are performed in one of three operating rooms. (*Id.*  
21 at ¶ 6.) Within each of the three operating rooms, there is a mobile drug cart that stores powerful  
22 pharmaceuticals, like Propofol. (*Id.* at ¶ 7.) The drug cart also acts as the base for computer  
23 monitors used by doctors for various purposes (*i.e.*, medical record creation and retrieval). (*Ibid.*)

24 **B. Sharp’s Investigation into Missing Propofol.**

25 In 2012, Sharp noticed that certain amounts of Propofol and other drugs were missing  
26 and unaccounted for. (Declaration of Howard LaBore (“LaBore Decl.”), ¶ 2.) Despite months of  
27 investigation, Sharp remained unable to definitively determine the cause of the missing Propofol.  
28 (*Id.* at ¶ 3.) Therefore, Sharp activated cameras in the computer monitors located atop the drug

1 carts in the operating rooms to obtain video evidence of the unlawful removal of drugs. (*Id.* at ¶  
2 4.) The cameras were motion activated, so they began recording when someone entered the  
3 operating room in which the camera was located, whether that person was a doctor, nurse,  
4 patient, or other Sharp personnel. (*Id.* at ¶ 5.) Throughout any given day, numerous doctors and  
5 nurses enter and exit the operating rooms. (Cone Decl., ¶ 6.)

6 Because the drug carts were mobile (*i.e.*, on wheels), doctors and nurses could and did  
7 rotate or move the drug carts depending on their needs, which changed the angle of the camera.  
8 (Cone Decl., ¶ 7; Declaration of Teresa C. Chow (“Chow Decl.”), ¶ 2, Ex. “A” (LaBore  
9 Deposition Transcript), 83:15-84:2; Declaration of Linda Hamel (“Hamel Decl.”), ¶¶ 3-5.) The  
10 monitors in which the cameras were installed could also be repositioned, allowing any person in  
11 the operating room to change the camera’s angle. (*Ibid.*, Ex. “A”, 110:6-9, 111:5-14, 187:3-5,  
12 188:24-189:6; Hamel Decl., ¶¶ 6-7.)

13 **C. Plaintiff’s Procedure and Recording.**

14 On May 15, 2013, Plaintiff underwent a caesarian section operation in Operating Room 1  
15 of the Women’s Health Center. (Chow Decl., ¶ 3, Ex. “B” (Plaintiff Deposition Transcript),  
16 74:4-14.) The camera in Operating Room 1 was activated during Jones’ May 15, 2013 operation.  
17 (*Id.* at ¶ 5.) The recording of Jones, which is approximately forty-five minutes long, shows  
18 Plaintiff entering the room, being prepped for surgery, undergoing surgery (albeit covered by a  
19 surgical tent), receiving post-surgery treatment, and exiting the room. (*Ibid.*) The recording does  
20 not contain any audio. (*Id.* at ¶ 6.)

21 **D. Sharp’s Deletion of Pre-February 2013 Videos**

22 In February 2013, Sharp deleted all videos taken prior to February 2013 that were  
23 irrelevant to its investigation into missing Propofol. (Chow Decl., ¶ 2, Ex. “A”, 94:4-22; LaBore  
24 Decl., ¶ 6.) Sharp deleted these videos because storing them all on Sharp’s system would likely  
25 cause Sharp’s system to crash or at least increase the chances of a crash. (Chow Decl., ¶ 2, Ex.  
26 “A”, 94:4-22.) When Sharp deleted these recordings, neither Plaintiff nor any other putative class  
27 member had filed suit or indicated his or her intention to do so. (Lewis Decl., ¶ 3.)

28 Further, prior to February 2013, Sharp only reviewed those recordings taken at or near

the time Propfol was reported missing. (LaBore Decl., ¶ 7.) Therefore, for most, if not all, of the recordings deleted, no one from Sharp reviewed the recording. (*Ibid.*)

### III. PROCEDURAL HISTORY

On January 12, 2017, Jones filed suit against Sharp, asserting eight causes of action.<sup>1</sup> (*See* Jones' Complaint ("Compl.")). On September 28, 2017, Sharp filed a Motion for Summary Judgment or, in the alternative, Summary Adjudication, arguing, among other things, that Plaintiff had consented to the recording ("MSJ/MSA"). (*See* MSJ/MSA.) In its order, the Court dismissed all of Plaintiff's causes of action except her two invasion of privacy claims (common law and constitutional) and her breach of fiduciary duty claim. (*See* Order.) With regard to those claims, the Court found that: "*Plaintiff's* evidence [was] sufficient to create triable issues of material fact as to whether Sharp's use of hidden cameras to videotape *Plaintiff*, while *she* was in the operating room during *her* surgery, for purposes of Sharp's investigation into the missing Propfol, was beyond the reasonable expectations of *Plaintiff* when *she* signed the admission agreement." (*Id.* at p. 4 (emphasis added).)

### IV. CLASS CERTIFICATION STANDARD

Code of Civil Procedure Section 382 authorizes class suits when "the question is one of a common or general interest, of many persons, or when the parties are numerous, and it is impracticable to bring them all before the court." To obtain certification, "a party must establish the existence of both an ascertainable class and a well-defined community of interest among the class members." *Linder v. Thrifty Oil Co.* (2000) 23 Cal.4th 429, 435, as modified (Aug. 9, 2000). The community of interest requirement embodies three factors: "(1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class." *Richmond v. Dart Indus., Inc.* (1981) 29 Cal.3d 462, 470. "The ultimate question in every case of this type is whether ... the issues which may be jointly tried, when compared with those requiring separate

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<sup>1</sup> Plaintiff asserted causes of action for: (1) Breach of Fiduciary Duty; (2) Unlawful Recording of Confidential Information; (3) Negligent Creation of Medical Information; (4) Negligent Maintenance of Medical Information; (5) Unlawful Disclosure of Medical Information; (6) Invasion of Privacy - Intrusion into Private Affairs; (7) Invasion of Privacy under the California Constitution; and (8) Distribution of Private Sexually Explicit Materials. (*See* Compl.)

1 adjudication, are so numerous or substantial that the maintenance of a class action would be  
2 advantageous to the judicial process and to the litigants.’ [Citation.]” *Lockheed Martin Corp. v.*  
3 *Sup. Ct.* (2003) 29 Cal.4th 1096, 1104–1105 (quoting *Collins v. Rocha* (1972) 7 Cal.3d 232,  
4 238). “A class action also must be the superior means of resolving the litigation, for both the  
5 parties and the court.” *Lee v. Dynamex, Inc.* (2008) 166 Cal.App.4th 1325, 1333.

6 **V. ARGUMENT**

7 **A. The Class Is Overbroad, And Plaintiff Has Failed to Provide A Feasible**  
8 **Method to Exclude Claimless Class Members From The Definition.**

9 “Ascertainability...goes to the heart of the question of class certification,” and “requires a  
10 class definition that is ‘precise, objective and presently ascertainable.’” *Global Minerals &*  
11 *Metals Corp. v. Sup. Ct.* (2003) 113 Cal.App.4th 836, 858 (quoting *In re Copper Antitrust*  
12 *Litigation* (W.D. Wis. 2000) 196 F.R.D. 348, 359). Ascertainability is achieved “by defining the  
13 class in terms of objective characteristics and common transactional facts making the ultimate  
14 identification of class members possible....” *Sevidal v. Target Corp.* (2010) 189 Cal.App.4th 905,  
15 918 (internal quotations omitted).

16 A class is not ascertainable, however, if it is overbroad. *See Kendall v. Scripps Health*  
17 (2017) 16 Cal.App.5th 553, 574 (“Class certification is properly denied for lack of  
18 ascertainability when the proposed definition is overbroad....”). A class is overbroad if it  
19 includes individuals who do not have a claim against the defendant, and “the plaintiff offers no  
20 means by which only those class members who have claims can be identified from those who  
21 should not be included in the class.” *See id.*; *see also Marler v. E.M. Johansing, LLC* (2011) 199  
22 Cal.App.4th 1450, 1460 (“We may consider whether the class ‘definition is overbroad,’ and if  
23 the plaintiffs have shown that ‘class members who have claims can be identified from those who  
24 should not be included in the class. [Citations.]”).

25 Here, Plaintiff’s Class definition includes individuals who have no claim against Sharp,  
26 and Plaintiff has offered no method by which to exclude those individuals from the class.

27 **1. Plaintiff’s Causes of Action Require Proof Of Recording.**

28 As an initial matter, each of Plaintiff’s remaining three causes of action (breach of

1 fiduciary duty, common law invasion of privacy, and invasion of privacy under the California  
2 Constitution) have a common element—recording. For proof of this fact, the Court need look no  
3 further than Plaintiff’s prior filings in this case.

4 In her Complaint, Plaintiff alleges that Sharp breached its fiduciary duty to Plaintiff and  
5 the Class by using Plaintiff’s and the Class’ “confidential information for [Sharp’s] own benefit  
6 in conducting an internal investigation or communicated [Plaintiff’s and the Class’] confidential  
7 information to third parties....” (Compl., ¶ 38.) Plaintiff clarified in her Opposition to Sharp’s  
8 Motion for Summary Judgment that the recordings are the “confidential information” she claims  
9 Sharp improperly used. (Opp. to MSJ/MSA, 17:2-4 (“Sharp made an unlawful *use* of Plaintiff’s  
10 confidential medical information without her authorization, when they [sic] permitted Howard  
11 LaBore to view the video of her undergoing cesarean section.”).) Thus, individuals who were not  
12 actually recorded have no breach of fiduciary duty claim.

13 The same is true for Plaintiff’s two invasion of privacy claims. Plaintiff asserts that Sharp  
14 invaded her and the Class’ privacy when it (1) installed recording devices in the operating rooms,  
15 (2) recorded Plaintiff and the Class’ in the operating rooms, and (3) disclosed the recordings to  
16 third parties. (See Compl., ¶¶ 94-96, 108-110.) However, neither installation nor disclosure is  
17 actionable absent actual recording.

18 First, recording is a necessary prerequisite to disclosure because absent a recording there  
19 would be nothing to disclose. Second, installation is not actionable because installation alone is  
20 not a sufficiently serious invasion, let alone any invasion at all, of the privacy right that Plaintiff  
21 alleges Sharp invaded—*i.e.*, the right to not have her confidential communications and medical  
22 procedures in the operating rooms of the Women’s Center recorded, viewed, or heard by persons  
23 not present in the operating room. (See Compl., ¶¶ 95, 107.) See also *Hill v. Nat’l Collegiate*  
24 *Athletic Assn.*, 7 Cal.4th 1, 37, 38 (1994) (stating that to be actionable under California’s  
25 common law or Constitution, the invasion must be “highly offensive to a reasonable person” or  
26 “sufficiently serious in [its] nature, scope, and actual or potential impact to constitute an  
27 egregious breach of the social norms underlying the privacy right,” respectively). Without any  
28 actual recording, no one other than the persons in the operating room heard Plaintiff’s

communications or witnessed her procedure.<sup>2</sup> Therefore, as with Plaintiff's breach of fiduciary duty claim, individuals who were not recorded have no claim for invasion of privacy.

2. Not Every Class Member Was Recorded.

Despite the fact that to have an actionable claim against Sharp an individual must have been recorded, Plaintiff's class definition includes: "All persons who underwent a medical procedure in an operating room at the Women's Center at Sharp Grossmont Hospital between July 17, 2012, and June 30, 2013." (Compl., ¶ 31; *see also* Mot. at 8:20-21.) Plaintiff apparently assumes that if a person underwent a medical procedure in one of Sharp's Women's Center operating rooms between July 17, 2012 and June 30, 2013 (*i.e.*, when the cameras were activated), that person was necessarily recorded. Plaintiff is wrong.

As Howard LaBore testified, "[t]he camera was in the monitor of the screen that was attached to an anesthesia cart....Wherever the screen was pointed, that's the direction you got....Because it was on this mobile anesthesia cart where the computer was attached, I didn't control where it was rotated...The videos showed, [in] some cases, just the doorways." (Chow Decl., ¶ 2, Ex. "A", 83:15-84:2; *see also* Hamel Decl., ¶¶ 2-7.) Additionally, Mr. LaBore testified that, on "numerous" occasions, "people purposely put tape over the cameras and then turned the monitor so it was facing the walls so you can't see what was going on." (Chow Decl., ¶ 2, Ex. "A", 110:6-9, 111:5-14; *see also* *Id.* at Ex. "A", 187:3-5 ("In some of the video clips you can tell who put the tape on, and you can tell who turned the cameras off."); *Ibid.* at Ex. "A", 188:24-189:3 ("[T]he anesthesia people...were the people who were either...turning the monitors toward the wall or putting tape over it.").)

Mr. LaBore also testified that the cameras were not always operational between July 17, 2012 and June 30, 2013. (Chow Decl., ¶ 2, Ex. "A", 93:2-6 (A "part of the [Information Security] branch [of Sharp]...[w]ent in and did this refresh" and "[w]hen they did that, they inadvertently left us unable to record videos in that operating room").) The changes in camera angle and the time in which the cameras were not operational necessarily proves that not all

<sup>2</sup> It should be noted that the recordings did not capture audio. (Chow Decl., ¶ 8.) Therefore, even if a camera was installed and activated, Plaintiff's communications would not have been recorded.

1 Class members were recorded and, therefore, not all Class members have a claim.

2 3. Plaintiff Fails To Offer An Administratively Feasible Way To Identify  
3 Class Members Who Have Claims.

4 Because not every person who underwent a medical procedure in one of Women's  
5 Center's operating rooms between July 17, 2012 and June 30, 2013 was recorded, Plaintiff's  
6 Class, as currently defined, includes individuals who have no claim against Sharp at all.  
7 Therefore, Plaintiff must provide a "means by which only those class members who have claims  
8 can be identified from those who should not be included in the class." *Ghazaryan v. Diva*  
9 *Limousine, Ltd.* (2008) 169 Cal.App.4th 1524, 1533 n. 8; *see also Noel v. Thrifty Payless, Inc.*  
10 (2017) 17 Cal.App.5th 1315, 1326 (stating "plaintiff failed to articulate and support with  
11 evidence any means of identifying potential class members, as required by case law."). This  
12 "means" must not impose on the defendant "unreasonable expense or time." *Hale v. Sharp*  
13 *Healthcare* (2014) 232 Cal.App.4th 50, 58.

14 Plaintiff here provides no administratively feasible method of determining which of the  
15 Class members were actually recorded. Plaintiff claims that Sharp could "review each  
16 recording," which, Plaintiff argues, would take approximately three, forty-hour weeks based on  
17 Mr. LaBore's testimony. (Mot. at 14:27-15:3.) Plaintiff, however, ignores two crucial facts.

18 First, prior to Plaintiff filing suit and in its ordinary course, Sharp deleted videos that  
19 were both (1) immaterial to Sharp's investigation of the missing Propofol and (2) taken before  
20 February 1, 2013. (*See* Chow Decl., ¶ 2, Ex. "A", 94:4-22; *see also* LaBore Decl., ¶ 6.)  
21 Therefore, even if it were neither unreasonably expensive nor time consuming to review each  
22 and every video, doing so would not result in Sharp being able to identify each Class member  
23 who was recorded. It would, at best, only identify persons who were recorded from February 2,  
24 2013 to June 30, 2013, accounting for only roughly forty percent of the Class period.

25 Second, Plaintiff assumes that the time it took Mr. LaBore to review the post-February 1,  
26 2013 videos the first time would be the same as the time it would take Sharp now to both review  
27 the videos and identify the patient (if any) depicted in the video. Plaintiff's assumption is wrong.  
28 Mr. LaBore testified that when he looked at the videos the first time, his instructions were not to

1 “look [at the videos] from one to the end of the whole thing;” therefore, he “skimmed through  
2 [them] looking for specific things.” (Chow Decl., ¶ 2, Ex. “A”, 113:11-23; *see also* LaBore  
3 Decl., ¶ 8.) “Skimming” is clearly no longer an option.

4 Further, when Mr. LaBore looked at the videos the first time, he was merely trying to  
5 identify whether they contained patients, not who the patients they contained were. (Chow Decl.,  
6 ¶ 2, Ex. “A”, 113:24-114:6; LaBore Decl., ¶ 8.) Mr. LaBore would now have to (1) determine  
7 whether the video depicts a patient and (2) if it does, identify the patient who underwent a  
8 surgery at that time in that specific operating room. (LaBore Decl., ¶ 10.) Plaintiff fails to  
9 account for this crucial extra step.

10 Sharp partially completed this process when it located the recording of Plaintiff. First,  
11 Sharp had to locate Plaintiff’s medical records. (LaBore Decl., ¶ 11.) Second, it had to review the  
12 medical records to determine the date and time of Plaintiff’s procedure, as well as the operating  
13 room in which the procedure occurred. (*Ibid.*) Third, Sharp had to locate among the over 7,000  
14 video clips obtained the video clip that corresponds with the date, time, and location of  
15 Plaintiff’s surgery. (*Ibid.*) Finally, Sharp had to compare a picture of Plaintiff (which she had  
16 provided) to the woman depicted in the recording to confirm that the recording was, in fact, of  
17 Plaintiff. (*Ibid.*)

18 Sharp would have to follow this same process for each of the 1,806 women who fall  
19 within Plaintiff’s Class definition. (*Id.* at ¶ 14.) In the event that the recording started when a  
20 doctor or other hospital personnel entered the operating room, Sharp would have to continue  
21 watching the video until either the recording stopped or a patient entered the room. (*Id.* at ¶ 15.)  
22 Based just on a sampling of videos, the time between when the recording starts and when a  
23 patient enters the room can vary from immediately to never at all. (*Ibid.*) Further, the videos vary  
24 greatly in length, ranging from a few minutes to over two hours, and, at times, the recording does  
25 not stop between operations, making identifying patients that much more difficult and time  
26 consuming. (*Ibid.*)

27 Assuming, conservatively, that the above-described process takes twenty minutes to  
28

complete for each Class member, Sharp would be required to expend over 600 hours<sup>3</sup> just to confirm (1) whether a recording exists that corresponds to the Class member's medical records and (2) if so, whether that recording depicts a patient. (*Id.* at ¶ 13.) Assuming that the recordings of sixty percent of the 1,806 putative Class members were deleted in February 2013, the process would take 241 hours.<sup>4</sup>

These hundreds of hours of work, however, would not confirm that the patient in the video (assuming there is one) is the putative Class member whose medical record Sharp is cross-referencing. (*Id.* at ¶ 16.) Unlike with Plaintiff, Sharp does not have pictures of all its patients. (*Ibid.*) Therefore, Sharp has no way of definitively determining which patient is actually depicted in the recording. (*Ibid.*) Sharp would have to depose or call to testify at trial each putative Class member to have her identify herself in the recording.

Assuming, conservatively, that each putative Class member could in thirty minutes or less be sworn in (whether at deposition or trial), watch a portion of the recording, and either confirm or deny the she is the patient in the recording, this process alone would take an additional 900 hours to complete.<sup>5</sup> If videos no longer exist for sixty percent of the putative Class members, it would take Sharp 361 hours to complete.<sup>6</sup> Therefore, all told, the process of determining who is actually a member of the Class would take, at the very least, between 1,500 and 600 hours.

This case, therefore, is similar to *Hale v. Sharp Healthcare* (2014) 232 Cal. App. 4th 50, 61, where the court refused to certify the class because the class was not "reasonably ascertainable." In *Hale*, the plaintiff sued on behalf of himself and "those who received 'emergent-care' after August 11, 2003 and who 'were not covered by insurance or government healthcare programs at the time of treatment'." *Id.* at 159. Sharp presented evidence that there was "no reasonable way for Sharp to ascertain who has claims and who does not" because (1) Sharp does not always determine whether the patient is insured until after admission; (2) patients

<sup>3</sup> Calculated as: 1,806 Class members X 20 minutes each.

<sup>4</sup> Calculated as: 1,806 Class members X 40% X 20 minutes each.

<sup>5</sup> Calculated as: 1,806 Class members X 30 minutes each.

<sup>6</sup> Calculated as: 1,806 Class members X 40% X 30 minutes each.

1 often learn long after reporting that they are uninsured that they qualify for financial assistance;  
2 and (3) when a patient is later determined to qualify for financial assistance, Sharp does not  
3 regularly update its billing codes, making a billing-code search insufficient. *Id.* at 159-160.  
4 Based on these facts, the court concluded that to determine which class members actually had  
5 claims against Sharp, Sharp would have to complete an individualized analysis of each patient's  
6 payment record, which required incurring an “administrative cost...so substantial to render the  
7 likely appreciable benefits to the class *de minimis* in comparison.” *Id.* at 59, 61.

8 The same is true here. Plaintiff’s class definition is overbroad, and her proposed means of  
9 identifying those Class members who actually have claims would impose on Sharp such a  
10 substantial burden that it would render class treatment ineffective. The Motion should be denied.

11 **B. The Class Lacks a Well Defined Community of Interest.**

12 In addition to establishing that the class is ascertainable, a plaintiff must establish that the  
13 class possesses a “well defined community of interest in the questions of law and fact involved  
14 affecting the parties to be represented.” *Daar v. Yellow Cab Co.* (1967) 67 Cal.2d 695, 704.  
15 Proving a “well defined community of interest” requires proof of three distinct elements: (1) that  
16 “predominant common questions of law or fact” exist; (2) that the class representatives have  
17 “claims or defenses typical of the class;” and (3) that the class representatives “can adequately  
18 represent the class.” *Sav-on Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326. If  
19 class-wide adjudication requires resolution of “diverse factual issues,” certification is  
20 unwarranted, “even though there may be...common questions of law.” *Brown v. Regents of*  
21 *University of California* (1984) 151 Cal.App.3d 982, 988–989; *City of San Jose v. Superior*  
22 *Court* (“*San Jose*”) (1974) 12 Cal.3d 447, 459. Plaintiff here has failed to establish either that  
23 common questions of law and fact predominate or that class treatment would be beneficial.

24 **1. Individual Issues Predominate.**

25 A “class action cannot be maintained where each member's right to recover depends on  
26 facts peculiar to his case” because “the community of interest requirement is not satisfied if  
27 every member of the alleged class would be required to litigate numerous and substantial  
28 questions determining his individual right to recover following the ‘class judgment’ determining

1 issues common to the purported class. [Citation.]" *San Jose*, supra, 12 Cal.3d at p. 459.

2 Common issues do not predominate here because every member of the Class would be  
3 required to litigate (1) whether the recording of her constituted a serious invasion of her privacy,  
4 (2) whether the consent language in the Admission Agreement fell within her reasonable  
5 expectations, and (3) whether she suffered any damages at all and, if so, to what degree.

6 **Individual Issue No. 1: Severity of Invasion**

7 As noted above and as admitted by Plaintiff in her Motion, Plaintiff's common law and  
8 constitutional invasion of privacy claims both require that the invasion be sufficiently serious,  
9 although they use different terms to describe the necessary severity. (Mot. at 10:16-24.) *See also*  
10 *Hill*, supra, 7 Cal. 4th at 37, 38. Plaintiff, however, argues that the seriousness of the invasion  
11 can be demonstrated through common proof because liability does not turn on the "subjective  
12 belief of Plaintiff, or any other class member," but instead on "whether a reasonable person  
13 would find the intrusion 'highly offensive.'" (Mot. at 10:25-28.) In making this argument,  
14 Plaintiff fails to consider that each recording is inherently different.

15 Some recordings, like Plaintiff's, show the patient entering the room, being prepped for  
16 surgery, undergoing surgery (albeit covered by a surgical tent), receiving post-surgery treatment,  
17 and exiting the room. (Chow Decl., ¶ 5; LaBore Decl., ¶ 8.) Others just show the patient entering  
18 or exiting the room. (LaBore Decl., ¶ 8.) In some videos, the patient's face is clearly visible.  
19 (*Ibid.*) In others, whether because of the angle of the camera, lighting in the room, type of  
20 surgical clothing worn, or simply resolution of the video, the patient's face is unrecognizable.  
21 (*Ibid.*) Each of these myriad factors must be considered by the jury when determining whether  
22 the invasion is sufficiently serious.

23 For example, would it be "highly offensive to a reasonable person" to record a fully-  
24 clothed patient entering an operating room, but nothing more? Likewise, is recording a fully-  
25 clothed patient exiting an operating room "sufficiently serious...to constitute an egregious  
26 breach of...social norms?" And if the patient is wholly unrecognizable, is there an invasion of  
27 privacy at all, let alone one that is "highly offensive" or in violation of "social norms"?

28 In *San Jose*, the California Supreme Court reversed the grant of class certification and

1 ordered the case dismissed for reasons similar to those presented here. 12 Cal. 3d at 465. There,  
2 the plaintiffs brought suit on behalf of themselves and “all real property owners situated in the  
3 flight pattern of the San Jose Municipal Airport,” alleging nuisance and inverse condemnation  
4 and “[s]eeking recovery for diminution in the market value of their property caused by aircraft  
5 noise, vapor, dust, and vibration.” *Id.*

6 In reaching its decision, the Supreme Court noted that “the present action for nuisance  
7 and inverse condemnation is predicated on facts peculiar to each prospective plaintiff,” including  
8 “[d]evelopment, use, topography, zoning, physical condition, and relative location” of the  
9 property. *Id.* at 461. The Supreme Court explained: “it is conceivable the noise created by airport  
10 traffic may cause no actionable interference with land immediately adjoining the end of the  
11 runway—because that land is used for a noisy industrial use, while the same air traffic may be  
12 causing substantial interference giving rise to liability to a single family residence miles away.”  
13 *Id.* at 461, n. 8. In other words, while the occurrence giving rise to the claims was the same (*i.e.*,  
14 departing and landing airplanes), the resulting impact on each individual plaintiff depended on  
15 that plaintiff’s experience, which defeated class certification.

16 The same is true here. As in *San Jose*, each putative Class members’ invasion of privacy  
17 claim arises out of a common event (*i.e.*, the recording). However, also as in *San Jose*, the  
18 common event does not necessarily give rise to liability. The court in *San Jose* would have had  
19 to individually analyze the “[d]evelopment, use, topography, zoning, physical condition, and  
20 relative location” of each putative class member’s property to determine whether he or she even  
21 had a claim just as the Court here will have to individually analyze each putative class member’s  
22 recording to determine whether what was recorded was “highly offensive” or in violation of  
23 “social norms.”

24 Plaintiff attempts to avoid this result by relying on *Trujillo v. City of Ontario* (C.D. Cal.  
25 Apr. 14, 2005) No. EDCV 04-1015-VAP(SGLx), 2005 U.S. Dist. LEXIS 50353, for the  
26 proposition that invasion of privacy claims based on video recording can be certified. (Motion,  
27 11:3-6.) Not only is *Trujillo* not binding on this Court<sup>7</sup>, but it is also distinguishable.

28  
<sup>7</sup> *Landmark Screens, LLC v. Morgan, Lewis & Bockius, LLP* (2010) 183 Cal.App.4th 238, 251, n. 6.

In *Trujillo*, the court never once discussed the necessary elements of the plaintiffs' invasion of privacy claims. The court did not discuss whether, depending on what each individual plaintiff was recorded doing, the recording would be "highly offensive" or violative of "social norms" to a reasonable person. In fact, the only thing the court discussed in relation to predominance is differences in damages. *See Trujillo*, supra, 2005 U.S. Dist. LEXIS 50353.

The court's omission of these important considerations may be explained by the fact that "Defendants...did not discuss [predominance]" in their opposition to the plaintiffs' class certification motion. *Trujillo*, 2005 U.S. Dist. LEXIS 50353, \*11, fn. 3. Or perhaps it can be explained by the fact that, by all accounts, there was only one video. *Id.* at \*5 ("The First Amended Complaint avers that 125 people have been identified on a *surveillance video* obtained by Plaintiffs..." (emphasis added).) Or maybe the court's omission was based on the fact that every class member, at some point or another, may have been recorded in some "stage of undress." *Id.* at \*8 ("The...degree of undress bear[s] on damages." ).<sup>8</sup>

Regardless of the court's reasons, *Trujillo* is nothing like the case here. Sharp has raised and thoroughly argued the lack of predominance. There are over 7,000 unique video clips, not just one. And the individual recordings do not show every putative Class member in some degree of undress; some of the videos merely show the putative class member entering the operating room fully clothed. (LaBore Decl., ¶ 8.) Ultimately, determining whether the recording of each putative Class member was sufficiently egregious to give rise to a common law or constitutional claim for invasion of privacy is an individualized question and defeats class certification.

## **Individual Issue No. 2: Enforceability of Admission Agreement**

As Plaintiff admits in her Motion, to be successful on either of her invasion of privacy claims, she must establish that she and the Class members had an objectively reasonable expectation of privacy in Sharp's Women's Center's operating rooms. (Mot., 10:13-26.) However, no such reasonable expectation can exist if Plaintiff or any of the Class members consented to the recording. *See Hill*, supra, 7 Cal.4th at 26 ("[T]he plaintiff in an invasion of

<sup>8</sup> Given the brevity of the court's opinion, it cannot be determined why the individual elements of invasion of privacy were not discussed.

1 privacy case must have conducted himself or herself in a manner consistent with an actual  
2 expectation of privacy, *i.e.*, he or she must not have manifested by his or her conduct a voluntary  
3 consent to the invasive actions of defendant.”). Even if the issue of consent is not an affirmative  
4 element of Plaintiff’s claims, it is an affirmative defense that must be fully litigated. *See Baugh*  
5 *v. CBS, Inc.* (N.D. Cal. 1993) 828 F.Supp. 745, 757 (“[A]s with any intentional tort, consent is an  
6 absolute defense [to an intrusion on seclusion claim], even if improperly induced.”); *see also*  
7 *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2561 (2011) (holding that a defendant is  
8 entitled to litigate any individual affirmative defenses it may have to class members’ claims).  
9 And “a defendant may defeat class certification by showing that an affirmative defense would  
10 raise issues specific to each potential class member and that the issues presented by that defense  
11 predominate over common issues.” *Walsh v. IKON Office Sols., Inc.* (2007) 148 Cal.App.4th  
12 1440, 1450, as modified (Mar. 28, 2007).

13 Most, if not all, of the putative Class signed Sharp’s Admission Agreement prior to  
14 undergoing any medical procedure in the Women’s Center’s operating rooms. (Cone Decl., ¶ 4.)  
15 The first line of the first paragraph of the Admission Agreement stated: “You consent...to the  
16 taking of photographs and videos of you for medical treatment, scientific, education, quality  
17 improvement, safety, identification or research purposes, at the discretion of the hospital and  
18 your caregivers and as permitted by law.” (*Id.* at ¶ 5, Ex. “C”).

19 Plaintiff argues that the issue of consent actually supports certification because each of  
20 the Admission Agreements signed by the Class members is identical, and, therefore, its  
21 interpretation is a “common question.” (Mot. at 12:9-17.) Interpreting the Admission Agreement,  
22 however, is just one step in the Court’s analysis. To the extent the Court finds that the consent  
23 language covered the recordings at issue here, the Court must then determine whether it can be  
24 enforced against the Class members, which requires individualized analysis.

25 In its order on Sharp’s MSJ/MSA, the Court acknowledged that the enforceability of  
26 Sharp’s Admission Agreement, whether under the unconscionability or the reasonable  
27 expectations test, depends, at least in part, on “*Plaintiff’s* ‘reasonable expectations.’” (Order, p. 3  
28 (emphasis added).) In other words, the Court has already held that the enforceability of the

Admission Agreement, and the consent language contained therein, depends on the “reasonable expectations” of each Class member who signed it. *See accord Atl. Nat. Ins. Co. v. Armstrong* (1966) 65 Cal. 2d 100, 112 (holding that to consider the “reasonable expectations of the parties in entering into the agreement,” the court “must evaluate [the plaintiff’s] knowledge and understanding as a layman and his normal expectation of the extent of coverage of the policy”); *Beynon v. Garden Grove Med. Grp.* (1980) 100 Cal.App.3d 698, 706 (holding that the contractual provision, if enforced, would “defeat the reasonable expectations of [the] one enrolling in the plan” (emphasis added)).

In *Graham v. Scissor-Tail, Inc.* (1981) 28 Cal. 3d 807, the California Supreme Court demonstrated the inherently individualized nature of determining the “weaker party’s” reasonable expectations. There, the court could not “conclude that the contractual provision requiring arbitration of disputes...was in any way contrary to the reasonable expectations of [the] plaintiff” because (1) “he had been a party to literally thousands of...contracts containing a similar provision;” (2) during the 3 years preceding the instant contracts, he had, on at least 15 different occasions, signed a contract containing provisions similar to those in question; and (3) he had been involved in similar proceedings before. *Id.* at 821.

Admittedly, the facts of *Graham* are distinguishable from the present case. The analysis, however, is not. If Plaintiff’s putative Class is certified, the Court will have to first determine what each individual class member expected to be included in the Admission Agreement and, second, whether her expectations were “reasonable” in light of her prior experiences. Such individualized questions defeat class certification.

### **Individual Issue No. 3: Damages**

One of, if not the most significant, hurdles Plaintiff must surmount in seeking to certify the Class is demonstrating that the varying degree of damages allegedly suffered by Plaintiff and the Class—ranging from severe emotional distress (as in the case of Plaintiff) to no distress at all (as in the case of individuals who were not recorded or have no knowledge of the recording)—does not defeat the Class’ “community of interest.” In her Motion, however, Plaintiff summarily dismisses the issue, relying on inapplicable case law. (Mot. at 11:18-12:8.)

1 Plaintiff claims that “[i]t is a long-established principle that differences among class  
2 members in the amounts of damages or restitution resulting from defendant’s unlawful conduct  
3 do not bar class certification.” (Mot. at 11:26-27.) And, generally, Plaintiff might be right. But  
4 Plaintiff fails to take into consideration that (1) determining whether a class member is entitled to  
5 any damages is different than determining what amount of damages he or she is entitled to and  
6 (2) the putative class members seek emotional distress damages.

7 “[C]lass certification is generally inappropriate when each member of the proposed class  
8 must individually establish emotional distress damages.” *Bennett v. Regents of University of*  
9 *California* (2005) 133 Cal.App.4th 347, 358; *see also Rose v. Medtronics, Inc.* (1980) 107  
10 Cal.App.3d 150, 155 (“In general, mass tort actions for personal injuries are not appropriate for  
11 class-action treatment.”) That is because “the complexity of the damage question alone, fully  
12 litigated by each class member, would far outweigh any small benefit derived from those issues  
13 which could be tried on a common basis.” *Brown v. Regents of University of California* (1984)  
14 151 Cal.App.3d 982, 990. Indeed, “consolidation of actions is the preferred procedure for  
15 disposition of such causes” due to “the great importance of tort claims for personal injuries to the  
16 claimants themselves and the consequent desire of claimants to be represented by counsel of  
17 their own choosing rather than by strangers, and...the wide disparity in damages that ordinarily  
18 arises from such claims.” *Fuhrman v. California Satellite Sys.* (Ct. App. 1986) 179 Cal.App.3d  
19 408, 424, disapproved on other grounds by *Silberg v. Anderson* (1990) 50 Cal.3d 205.

20 Recently, the District Court for the Southern District of California denied class  
21 certification based on facts similar to those here. In *D.C. by and through Garter v. County of San*  
22 *Diego* (S.D. Cal., Nov. 7, 2017, No. 15CV1868-MMA (NLS)) 2017 WL 5177028, the plaintiff  
23 brought suit against the County, alleging that the County had violated his rights and those of  
24 similarly situated minors when it subjected them to physical examinations without their or their  
25 guardians’ consent. *Id.* at \*\*1-2. In opposition to the plaintiff’s class certification motion, the  
26 County argued that “the question of damages requires individualized determinations  
27 inappropriate for class treatment.” *Id.* at \*14. The court agreed. *Id.* at \*16.

28 While the court noted that “individual damage calculations generally do not defeat a

1 finding that common issues predominate,” the court found that “proving injury to human dignity  
2 and emotional distress with respect to these claims will vary from person to person.” *Id.* at \*15.  
3 According to the court, “an infant class member, a five year old class member, and a twelve year  
4 old class member are unlikely to be entitled to the same compensation for their physical, mental,  
5 and emotional damages.” *Id.* at \*16. Damages were likely to be dependent on “the specific  
6 experiences of individual class members,” an “individualized inquiry which would overwhelm  
7 the common damages questions.” *Id.* at \*16.

8 The same is true here. Dr. James O’Brien, a psychiatrist and California Qualified Medical  
9 Examiner with decades of experience examining and diagnosing trauma patients, opines that the  
10 degree of distress suffered by an individual depends as much, if not more, on the individual’s  
11 personal make-up and characteristics as it does on the event giving rise to the distress. (*See*  
12 Declaration of Dr. James O’Brien (“O’Brien Decl.”).) As a frequent examiner of distressed  
13 soldiers, Dr. O’Brien has personally experienced multiple individuals who witnessed similar, if  
14 not the same, acts, but whose distress varied greatly. (*Id.* at ¶¶ 8, 10.) According to Dr. O’Brien,  
15 responses to stress-inducing external events can vary from the most severe, Post-Traumatic  
16 Stress Disorder, to one of the least severe, an adjustment disorder, to no clinically-defined  
17 response at all. (*Id.* at ¶¶ 3-4.) Even within these response types, distress can “vary greatly in  
18 terms of clinical severity regardless of the nature of the initial stressor....” (*Id.* at ¶¶ 3-4.)

19 Given the extreme variations in individual responses, psychiatrists, like Dr. O’Brien,  
20 cannot evaluate distress generally, but instead must conduct “individual assessments” or “case  
21 formulations” for each patient they treat. (*Id.* at ¶¶ 5-6, 11.) Psychiatrists must analyze not only  
22 the “type, nature, and severity of the event giving rise to the distress,” but also the “patient’s  
23 background and psychological fortitude.” (*Id.* at ¶ 6.) They also must consider the patient’s  
24 specific susceptibilities on the basis of genetics, including variations in, among other things,  
25 epigenetics, hormones, and the presence of the “worrier” or “warrior” gene. (*Ibid.*) Each of these  
26 factors impacts whether the individual will suffer distress and to what degree, and none can be  
27 evaluated without “clinical training to recognize when the combination of predisposing,  
28 precipitating, perpetuating and protective factors has resulted in a pathological condition....”

(*Ibid.*; see also *id.* at ¶ 11 (cautioning against assessments by “nonclinical, nonmedical, or otherwise insufficiently trained individuals”).)

Plaintiff here seeks emotional distress damages for each of the nearly two thousand putative Class members. None of the Class members, however, can be painted with the same brush. Some, like Plaintiff, may claim that the “anxiety...associated with th[e] situation prevents [them] from going to the doctor in a normal way and trusting a medical professional in a normal way.” (Chow Decl., ¶ 3, Ex. B, 177: 18-21.) Others may experience no anxiety at all. (O’Brien Decl., ¶ 9 (discussing psychological resiliency).) Some, like Plaintiff, may even allege that, because of the recordings, they experience “[p]hysical manifestations of mental and emotional distress, including back pain, trouble sleeping and digestive issues” that require “[o]ngoing physical therapy, massage therapy, and stress reduction.” (Chow Decl., ¶ 6, Ex. D (Plaintiff’s Amended Resp. to FROGs), No. 6.7.) Others may experience no pain, sleeping or digestive issues. (O’Brien Decl., ¶ 9 (stressful event commonly results in “relatively stable pattern of healthy functioning”).)

Based on the individualized nature of the Class’ damages, this Court, if it certifies the Class, would be embroiled in hundreds, if not thousands, of mini trials, involving testimony from each Class member, Sharp’s expert, and, likely, Plaintiff’s expert. (*Id.* at ¶¶ 13-15.)

2. The Benefits, If Any, of Class Treatment Are Outweighed By The Inevitability of Mini-Trials.

Because class actions have the potential to create injustice, trial courts are required to “carefully weigh respective benefits and burdens and to allow maintenance of the class action only where substantial benefits accrue both to litigants and the courts.” *Newell v. State Farm Gen. Ins. Co.* (2004) 118 Cal.App.4th 1094, 1101. Whether such benefits exist are to be evaluated by, among other things, examining the potential difficulties in managing a class action. *Lee*, supra, 166 Cal.App.4th at 1333 (2008).

For the same reasons common questions do not predominate, treating this case as a class action would be unmanageable. First, Plaintiff has failed to set forth an administratively feasible method to actually identify the class members. Therefore, if the Class is certified, the Court will

1 have to expend time and resources just identifying on whose behalf Plaintiff is actually suing.  
2 Second, whether an individual Class member has a claim against Sharp turns on whether her  
3 recording actually shows something that is “highly offensive.” Thus, once the Court determines  
4 who is a class member, it will have to analyze each recording to determine whether those  
5 individuals even have a claim. Third, assuming the Court can identify the Class members and  
6 weed out those individuals for whom the recording is not “highly offensive,” the Court will have  
7 to determine, on an individual basis, whether those individuals consented to the recording,  
8 which, as noted above, requires an analysis of each individual’s expectations and whether they  
9 were reasonable. And finally, assuming the Court performs all the tasks described above and  
10 determines that Sharp is liable, the Court will have to hear testimony from each individual class  
11 member regarding (1) when she learned of the recording, (2) how the recording impacted her, (3)  
12 the treatment, if any, she received for emotional distress caused by the recordings; and (4)  
13 whether the impact of the recordings is temporary or permanent. The Court will also likely have  
14 to hear testimony from both Plaintiff’s and Sharp’s experts on (1) the reasonableness of the  
15 alleged emotional distress and the treatment for same; (2) the severity of the alleged emotional  
16 distress; and (3) the likely duration of the alleged damages. (O’Brien Decl., ¶ 15.) Without even  
17 taking into consideration any testimony offered by Plaintiff and assuming Dr. O’Brien could  
18 fully explain each Class member’s emotional state in thirty minutes, his testimony, alone, would  
19 take more than 900 hours<sup>9</sup>, or roughly 150 court days<sup>10</sup>.

20 Given the scope and pervasiveness of these individualized issues, trial in this matter, if it  
21 can be completed at all, will likely last months, if not years. If, however, individuals are  
22 permitted to bring suit on their own behalves as opposed to on a class-wide basis, such issues  
23 could be presented and adjudicated in less than a week. Class treatment is not warranted here.

## 24 **VI. CONCLUSION**

25 Based on the above, Sharp respectfully request that the Court deny Plaintiff’s Motion for  
26 Class Certification.

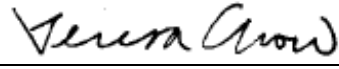
27 \_\_\_\_\_  
28 <sup>9</sup> Calculated as: 30 minutes x 1,806 putative Class members

<sup>10</sup> Calculated as: 903 hours of testimony ÷ 6 hours per court day.

DATED: February 16, 2018

Respectfully submitted,

**BAKER & HOSTETLER LLP**

By: 

Teresa C. Chow  
Matthew D. Pearson

*Attorneys for Defendants*  
SHARP HEALTHCARE and GROSSMONT  
HOSPITAL CORPORATION

**PROOF OF SERVICE**

I am employed in Los Angeles County, California. I am over the age of eighteen years and not a party to the within-entitled action. My business address is 11601 Wilshire Boulevard, Suite 1400, Los Angeles, CA 90025-0509. On February 16, 2018, I served a copy of the within document(s) in a sealed envelope address as follows:

**DEFENDANTS' OPPOSITION TO PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**



**VIA U.S. MAIL.** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Los Angeles, CA addressed as set forth below. I am readily familiar with the firm's practice of collection and processing correspondence for mailing. Under that practice it would be deposited with the U.S. Postal Service on that same day with postage thereon fully prepaid in the ordinary course of business. I am aware that on motion of the party served, service is presumed invalid if postal cancellation date or postage meter date is more than one day after date of deposit for mailing in affidavit



**VIA ONE LEGAL E-SERVICE.** I sent such documents to the individual(s) identified at the e-mail referenced below.

Duane A. Admire, Esq.  
**ADMIRE & ASSOCIATES**  
12880 Carmel Country Road, Suite D110  
San Diego, California 92130  
Tel: 619.316.6658  
Fax: 858.350.1046  
Email: duaneadmire@outlook.com

*Attorneys for Plaintiff*  
CARLA JONES

James R. Patterson, Esq.  
Allison H. Goddard, Esq.  
**PATTERSON LAW GROUP APC**  
402 West Broadway, 29<sup>th</sup> Floor  
San Diego, CA 92101  
Tel: 619.756.6990  
Fax: 619.756.6991  
Email: jim@pattersonlawgroup.com  
ali@pattersonlawgroup.com

*Attorneys for Plaintiff*  
CARLA JONES

I declare under penalty of perjury under the laws of the State of California that the above is true and correct. Executed on February 16, 2018, at Los Angeles, California.

  
Priscilla Markus